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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]

DECISION

MPA/166401

PRELIMINARY RECITALS

Pursuant to a petition filed June 01, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on June 18, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether Petitioner is eligible for Medicaid payment for foot orthotics.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Mary Chucka, OT, by written submission
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. A prior authorization requests seeking Medicaid payment for a foot longitudinal arch support was filed on behalf of Petitioner on May 5, 2015.
3. Petitioner's diagnosis is Ehlers-Danlos Syndrome. This is a congenital disorder causing connective tissue laxity, joint pain, and an increased propensity to develop osteoarthritis. See Exhibit # 4.
4. This PA request was denied as the request did not meet the standards necessary for approval of Medicaid payment.

DISCUSSION

The MA program may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat., §§49.46(2) and 49.47(6)(a), as implemented by the Wisconsin Administrative Code, chapter DHS 107.

The administrative code provision governing durable medical equipment provides, in relevant part, as follows:

DHS 107.24. Durable Medical Equipment and Supplies . . .

(2) COVERED SERVICES . . . (c) Categories of durable medical equipment. The following are categories of durable medical equipment covered by MA: ...

3. Orthoses. These are devices which limit or assist motion of any segment of the human body. They are designed to stabilize a weakened part or correct a structural problem. Examples are arm braces and leg braces....

...
(4) OTHER LIMITATIONS . . .

(f) Orthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross foot deformities, or when attached to a brace or a bar. These conditions shall be described in the prior authorization request....

...
Wis. Admin. Code, §DHS 107.24.

Further, policy developed by the Department states:

...
In addition, in order for OCSFO to be covered by ForwardHealth:

- The member is required to be ambulatory and/or have the ability to perform a standing pivot transfer.
- The OCSFO being requested is required to allow the member to perform activities of daily living. The OCSFO may be replaced only when no longer meeting the member's medical needs or when there is a change in the member's medical condition. If replacement is required before the OCSFO life expectancy is met, then PA is required.

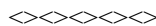
Prescription Policy

A prescription for OCSFO and/or shoe modifications must:

- Include an ICD diagnosis of gross foot deformity.
- Include an ICD diagnosis of a condition identified as an allowable diagnosis for OCSFO and/or shoe modifications.
- Be written by a physician after both the referring and rendering providers have documented the member's diagnosis and need for OCSFO and/or shoe modifications in the member's medical records maintained by the provider.

Online Provider Handbook, Topic 1760; found at:

<https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=17&s=2&c=286>



...
In addition, in order for OCSFO to be covered by ForwardHealth:

- The member is required to be ambulatory and/or have the ability to perform a standing pivot transfer.
- The OCSFO being requested is required to allow the member to perform activities of daily living.

...
ForwardHealth Update October 2014, # 2014-64, at page 1; found at:
<https://www.forwardhealth.wi.gov/kw/pdf/2014-64.pdf>

Thus, under Medicaid law and policy, orthotics can be covered only for postsurgery conditions or gross foot deformities. Petitioner's condition is not of that type.

CONCLUSIONS OF LAW

That the Department correctly denied the request for orthotics because Petitioner is not shown to have a gross foot deformity as required for Medicaid coverage.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

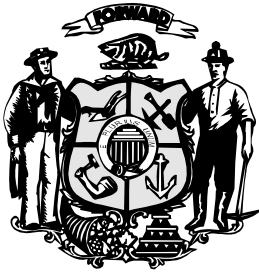
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of August, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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Madison, WI 53705-5400

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The preceding decision was sent to the following parties on August 20, 2015.

Division of Health Care Access and Accountability